



Fremont Board of Adjustment  
September 24, 2013  
Meeting Minutes

Members present: Chairman Doug Andrew, Member John (Jack) Downing, Alt/Selectmen Leon Holmes, Sr., Alt Dennis Howland, and Alt/recording Secretary Meredith Bolduc.

Mr. Andrew opened the meeting at 7:00 pm.

At the August 25, 2009 meeting Mr. Andrew designated Alternate Meredith Bolduc to fill the vacancy on the Fremont Board of Adjustment until such time as the Selectmen have appointed someone to serve as a full Board Member to fill that vacancy. That appointment remains in effect.

Mr. Holmes is a Selectman who was recently appointed as an Alternate to the ZBA. Mr. Howland is Chairman of the Open Space Advisory and was also recently appointed as an Alternate to the ZBA. They were welcomed as new Alternate Members.

#### MINUTES

Mr. Downing made the motion to accept the minutes of the August 27, 2013 meeting as written. Motion seconded by Mr. Andrew with unanimous favorable vote except for Mr. Holmes and Mr. Howland who abstained as they were not on the Board at that time.

#### VARIANCE

The Members discussed and reviewed the conditions of granting a Variance as outlined below.

A **variance** is an authorization which may be granted under special circumstances to use your property in a way that is not permitted under the strict terms of the zoning ordinance. For a variance to be legally granted, you must show that your proposed use meets **all five** of the following conditions:

1. Granting the variance must not be contrary to the **public interest**.
2. The proposed use is not contrary to the **spirit of the ordinance**.
3. Granting the variance would do **substantial justice**.
4. The proposed use would not diminish surrounding **property values**.
5. Denial of the variance would result in **unnecessary hardship** to the owner. Hardship, as the term applies to zoning, results if a restriction, when applied to a particular property, becomes arbitrary, confiscatory, or unduly oppressive because of conditions of the

property that distinguish it from other properties under similar zoning restrictions. RSA 674:33 (b) (5) provides the criteria for establishing unnecessary hardship:

(A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
- (ii) The proposed use is a reasonable one.

(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

### SPECIAL EXCEPTION

The Members discussed several examples of possible situations where a Special Exception would be needed. They also discussed the conditions of granting a Special Exception.

*From the Board of Adjustment Handbook – State of NH Office of Energy and Planning*

The Board of Adjustment **cannot legally approve a special exception for a prohibited use if the ordinance does not identify that use.** Also, the Board cannot legally approve a special exception if the stipulated conditions do not exist or cannot be met.

On the other hand, **if the special exception is listed in the ordinance and the conditions are met, the board cannot legally refuse to grant the special exception** even though it may feel that the standards are not adequate to protect the neighborhood.

Three questions must be answered to decide whether or not a special exception can be legally granted:

- 1) Is the use one that is ordinarily prohibited in the district?
- 2) Is the use specifically allowed as a special exception under the terms of the ordinance
- 3) Are the conditions specified in the ordinance for granting the exception met in the particular case?

The Members also discussed:

- A case from some time ago where a subdivision was allowed with frontage on a road that was not town accepted.
- A case a few years ago where the ZBA granted a Special Exception for an auto repair shop, the decision was appealed by the Conservation Commission through the Selectmen, and the decision was reversed because the property was in the Aquifer Protection District and the use was prohibited in that district.

- The Town Forest and the use of it's' trails. Mr. Downing said that there has recently been some damage to some trails, a kiosk and some signs.

#### MEETINGS

The Board discussed NH RSA 673:10, I as it pertains to holding monthly meetings.

*I. Meetings of the heritage commission, the historic district commission, the agricultural commission, the housing commission, the building code board of appeals, and the zoning board of adjustment shall be held at the call of the chairperson and at such other times as the board may determine.*

The Board discussed regularly scheduled meetings in the context of a work session when there are no cases for appeal scheduled. It was generally agreed that the work sessions are important not only for new Members, but for every Member because they allow for review and discussion of the Zoning Ordinances, updates on any legal changes and amendments that affect the ZBA. Mrs. Bolduc agreed and added that she felt the regular work sessions help the Members with ongoing understanding about the responsibilities and obligations of being a ZBA Member. It was the unanimous consensus of the Board to continue the monthly meetings as work sessions when are no cases for appeal.

Mrs. Bolduc related that she expected two separate Variance applications to be submitted within the next week or two that will probably be scheduled for the October meeting.

#### CORRESPONDENCE

There was no incoming correspondence.

At 8:10 pm Mr. Holmes made the motion to adjourn.

Motion seconded by Mr. Downing with unanimous favorable vote.

Next meeting: scheduled for October 22, 2013.

Respectfully submitted,

Meredith Bolduc, recording secretary

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